Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems	)	ET Docket No. 00-258

COMMENTS OF THE
PCIA, THE WIRELESS INFRASTRUCTURE ASSOCIATION

PCIA, the Wireless Infrastructure Association ("PCIA"), submits these comments on the Federal Communications Commission's Eighth Report and Order, Fifth Notice of Proposed Rule Making and Order in the above-captioned docket.[1] Specifically, PCIA comments on the proposal to adapt the 1.9 GHz broadband Personal Communications Service ("PCS") framework for clearing microwave incumbents to the new spectrum for Advanced Wireless Services ("AWS") in the 2.1 GHz band. PCIA operated the PCIA Microwave Clearinghouse ("MWCH"), which was the FCC-designated cost-sharing clearinghouse[2] responsible for administering nearly all of the cost-sharing that occurred in the 1.9 GHz PCS band. Based on that experience, PCIA submits the following comments for the Commission's consideration.

[1] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, *Eighth Report and Order, Fifth Notice of Proposed Rule Making and Order*, ET Docket No. 00-258 (Sept. 29, 2005) ("*5th NPRM*").

[2] *See* Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, Memorandum Opinion and Order, 11 FCC Rcd 9394 (1996).

I. THE FCC SHOULD APPLY A COST-SHARING FRAMEWORK FOR ADVANCED WIRELESS SERVICES BASED UPON THE MODEL USED FOR BROADBAND PERSONAL COMMUNICATIONS SERVICES

A. Cost-Sharing in the 1.9 GHz Broadband PCS Band Was Highly Successful

The creation of the cost-sharing framework for 1.9 GHz PCS, and the development of the MWCH, were innovative industry and agency responses to a difficult spectrum management problem—the need to distribute the costs of relocating incumbent licensees in a repurposed spectrum band among those new licensees that benefit from the relocation in a manner that is fair and administratively simple. In that respect, those rules worked extremely well, notwithstanding the complexity caused by the time differences in new entrant licensing and the difference of the overlay of market-area licensed broadband PCS and point-to-point usage of the 1.9 GHz band. In its lifetime, the PCIA MWCH received more than 3,500 relocated incumbent microwave link registrations. In addition, the Clearinghouse received nearly 200,000 Prior Coordination Notice ("PCN") data filings from 220 different licensees for some 2050 PCS licenses. Based upon that data, the MWCH identified approximately 13,000 cost-sharing obligations—in dollar figures, the total relocation costs registered with the MWCH was more than $750 million, and cost-sharing opportunities identified by the PCIA MWCH totaled just over $450 million. PCIA looks forward to working in partnership with the FCC and industry to help clear the AWS bands at 2.1 GHz and facilitate the introduction of needed new services for the public.

B. Microwave Clearing in the 2.1 GHz Band Poses Substantially Greater Challenges than Prior Clearing of the 1.9 GHz Band

The task at 2.1 GHz is more complex than clearing the 1.9 GHz band. There are nearly twice as many incumbent licensees, and the license areas for new entrants include three varying sizes, with one of those sizes (the Cellular Market Areas) being substantially smaller than the Basic Trading Areas ("BTAs") used at 1.9 GHz. In addition, the operating parameters—

including, most notably, bandwidth—vary considerably more at 2.1 GHz than at 1.9 GHz; and, finally, the 2.1 GHz band implicates cost-sharing with a new class of licensees, the Broadband Radio Service ("BRS") licensees at 2.150-2.156 GHz. As a result, PCIA expects a geometrically greater number of "triggers" to occur in the 2.1 GHz band—the threshold condition for cost-sharing obligations to arise. Nonetheless, PCIA is also confident that the experience and tools developed for the 1.9 GHz band will go far toward surmounting the added challenges posed by AWS relocation.

Indeed, PCIA believes that adoption of the 1.9 GHz clearing model, with some minor changes, is the only practicable means to achieving efficient and timely clearing of the 2.1 GHz band. As a proven tool for repurposing spectrum from incumbent to new operator use, the negotiated changeover of spectrum, with mandatory cost-sharing to equitably distribute the financial impact of relocation, is the only rational way to allow the use of 2.1 GHz for AWS under a reasonable timeframe. PCIA believes those policies can and should be extended to all of the proposed AWS bands where private (*i.e.*, non-government) relocation is required, including 2.160-2.2 GHz—the companion microwave bands for the AWS spectrum to be auctioned next year.

The policy considerations in favor of mandated cost-sharing at 2.1 GHz are, in fact, even greater than at 1.9 GHz. As an initial matter, the density and bandwidth of the links at 2.1 GHz renders the potential for joint negotiations impractical and the transaction costs for attempting to distribute costs among benefiting entities in the absence of a third party clearinghouse immense. In addition, now that additional spectrum for AWS has been allocated at 2.155-2.180 GHz, the same potential for disparate benefit exists at 2.1 GHz as existed with the later entrants in the PCS

band. Thus, PCIA believes a compelling case exists for applying the 1.9 GHz clearing framework for the 2.1 GHz AWS band.

II. WHILE THE MODEL FOR COST-SHARING IN THE 1.9 GHZ BAND WAS HIGHLY SUCCESSFUL, THE FCC SHOULD LEVERAGE LESSONS LEARNED TO TUNE THE PROCESS FOR THE 2.1 GHZ BAND

While PCIA believes that the clearinghouse concept has been a vast success overall, there are some respects in which the rules governing similar entities in the future might be modified. Based upon PCIA's experience, all parties would benefit if the rules promoted fundamental market incentives to rapidly clear the band and fairly distribute costs. In addition, the rules must be practicable, given actual scenarios that tend to arise in relocation and cost-sharing. Accordingly, PCIA recommends several modifications to the rules for use with the 2.1 GHz band that, through its experiences in addressing technical issues and resolving cost-sharing disputes in the 1.9 GHz band, are likely to arise at 2.1 GHz unless clarifications are adopted.

First, PCIA believes the FCC should develop an expedited procedure for issuing declaratory rulings and/or policy interpretations of the clearing rules to avoid lengthy disputes. In the cost-sharing context, disputes often impact more licensees than the parties to the disagreement. As PCIA learned in the context of 1.9 GHz PCS effort, despite the best intentions, rules are often crafted that result in multiple interpretations or create ambiguous results when applied to unique factual situations. In working through these issues with licensees, PCIA identified certain recurrent issues where the administrative tasks of achieving resolution were highly repetitive and could have been substantially accelerated if the FCC had a procedure for quickly providing definitive agency interpretations. PCIA accordingly urges the FCC to establish a process whereby a clearinghouse would be able to refer a question of interpretation to the agency and receive a rapid, public response, thereby lessening the potential for disputes.

Second, PCIA believes that the FCC should develop a dispute resolution process and make explicit its authority to order the payment of a cost-sharing amount from one entity to another. In PCIA's experience, even where all parties are acting in good faith, there arise situations that can turn into disputes regarding payment of cost-sharing obligations. Although PCIA successfully mediated most disputes in the 1.9 GHz effort, five situations required FCC involvement. In these instances it became apparent that there was no formal mechanism in place at the FCC for addressing such actions. Accordingly, PCIA encourages the FCC to implement a process to handle these situations with, as one outcome, the ability for the FCC to order the payment of a cost-sharing amount from one entity to another.

Third, one of the most notable factors contributing to the success of the relocation rules for 1.9 GHz was the adoption of the proximity test box,[3] a bright line test for cost-sharing. Having a bright line test eliminated many disputes over whether an entity was obligated under the sharing rules. Given the demonstrated efficacy of bright line tests, PCIA believes the Commission should:

- Adopt a rule requiring all licensees to file data for all constructed sites within 30 days with the clearinghouse. In the prior rules, the requirement to file site data was somewhat ambiguous,[4] and turned on whether a prior coordination notice for the site was required. In some cases, the MWCH had had difficulty getting certain licensees to file PCN data because the licensees conducted their own (or contracted for third party) interference analyses that indicated no PCN filings were required. Because

[3] *See* 47 C.F.R. §24.247(a)(3)(i).

[4] *See* 47 C.F.R. §24.247(a)(3)(i), stating "[o]n the day that a PCS entity files its prior coordination notice (PCN) in accordance with §101.103(d) of this chapter, it must file a copy of the PCN with the clearinghouse." However, PCNs pursuant to §101.103(d) are required only where the facilities "could affect or be affected by the new proposal in terms of frequency interference on active channels, applied-for channels, or channels coordinated for future growth." §101.103(d). Consequently, if all microwave links in an area have been relocated, no PCN is required pursuant to §101.103(d), and therefore no requirement exists to file a PCN with the clearinghouse. This is clearly not the intended result. Even if taken to a lesser extreme, a licensee inside the Proximity Box could conclude, based upon TSB-10F, that no interference with a particular facility will exist, not prepare a PCN, and not file data with the clearinghouse, thus defeating the purpose of having the test box as a bright line test not dependent upon actual interference.

such analyses are often in error, a rule requiring all licensees to file site data would be beneficial.

- Adopt a rule stating that each AWS licensee may trigger a cost-sharing requirement for a relocated link once per license, regardless of the size of the license. In the 1.9 GHz context, PCIA believed the rules were relatively clear. However, numerous disputes arose as to why larger area licensees did not trigger an obligation for each BTA where sites were in the proximity box. Given the size of the license areas at issue for AWS, PCIA believes a simple rule categorically affirming the one-license-one-trigger rule would be appropriate.

- Adopt a rule stating that, once triggered, deconstruction of a site does not relieve an entity of cost-sharing requirements. In several cases, PCIA was required to consider arguments by licensees that they should be relieved of cost-sharing obligations due to deconstruction. However, if licensees were able to retroactively eliminate an obligation through relocation of a site, the entire schema of obligations among cost-sharing participants for a particular link is subject to change at any time. In the interest of finality and predictability of results, PCIA does not believe that an obligation, once triggered, should be able to be "de-triggered."

- Adopt a rule that clarifies that if a new entrant operates in a manner protecting an existing incumbent and the incumbent is then relocated, the pre-existing new entrant still benefits from the relocation and cost-sharing is appropriate. It is clear that the FCC's procedures require cost sharing if a link is relocated and a new entrant deploys a site within the proximity threshold box for the link, regardless of whether the new entrant engineers its site to "avoid" any interference it might have caused or regardless of whether an engineering analysis reveals no interference would have been caused. This result should apply regardless of whether the site is deployed, or the link is moved, first.

Fourth, given the volume of potential clearinghouse activity, the FCC should revise certain rules to minimize the operational impact on participants. For example, the FCC should eliminate the 10-day rule[5] for filing link registrations by relocators. Relocators have every market incentive already to file link registrations, and delays in filing link registrations already penalize the relocator by applying depreciation that would otherwise not accrue. In contrast, to conclude links registered after 10 days are not eligible for cost-sharing imposes a draconian penalty for administrative oversights or situations where field conditions prevent such filings.

[5] *See* §24.245(a)

The FCC should also clarify that carriers are required only to file documentation of costs, which may be in summary form, as long as such documentation is available to cost-sharing participants. As long as the documentation is ultimately available to those subsequently triggering cost-sharing obligations, no purpose is served by arguments that a clearinghouse should be a repository for unnecessary information or undisputed facts.

Fifth, in cases of bankruptcy or disputes, the FCC should clarify that subsequent triggers may reduce their liabilities to other cost-sharing participants by "paying around" a prior trigger. In other words, if Relocator ***A*** pays $***X*** to relocate a microwave link, benefits from the relocation, and that link is triggered by Carrier ***B***, Carrier ***B*** would owe Relocator ***A*** $***X***/2, not considering depreciation. If the link is then triggered by Carrier ***C***, Carrier ***C*** would owe (not including depreciation), $***X***/6 to both Relocator ***A*** and Carrier ***B***, with the net result that each pays $***X***/3. If Carrier ***B*** files for bankruptcy, it is arguable that, under the bankruptcy laws, Carrier ***B*** may have its debt of $***X***/2 to Relocator ***A*** extinguished, yet still legally pursue collection of $***X***/6 from Carrier ***C*** (as occurred in the 1.9 GHz band). PCIA believes the Commission's policies should clarify that carriers are permitted to pay around carriers in financial distress and commensurately reduce their obligations. Thus, in the example above, Carrier ***C*** should be permitted to pay Relocator ***A*** $***X***/6 as well as the $***X***/6 owed to Carrier ***B***, thus reducing Carrier ***B***'s obligation to Relocator ***A*** to $***X***/3. This results in a far more equitable distribution of sharing payments.

Sixth, the FCC should establish reasonable parameters for purposes of contesting relocation costs. For example:

- While most carriers in the 1.9 GHz context paid cost-sharing on a good faith basis, there were numerous cases where later triggers argued that the relocation costs paid by a relocator were unreasonably high. In the case of the 1.9 GHz band, no threshold requirements existed for that claim to be made or substantiated. PCIA believes that the FCC should provide guidance on what constitutes good faith in this context and specifically state that good faith negotiations require like evidence to rebut cost-

sharing claims. In other words, if a line item cost-sharing breakdown has been provided by a relocation, an entity contesting those costs should be required to provide a line item breakdown of costs as well. If a relocator has a third-party estimate, those costs should not be contested in the absence of a third-party estimate by the subsequent trigger.

- In addition, while the FCC has—quite reasonably—prohibited "cost-averaging,"[6] the FCC should clarify that a rational division of non-link specific costs among several links relocated under a single contract is not prohibited cost averaging. For example, absent unusual circumstances pertaining to one link, the legal re-licensing costs of a network are most rationally divided up per link by averaging. That should not be prohibited.

- Finally, the FCC should clarify that documentation does not extend to requiring submission of receipts or proof of expenditures by the relocatee; indeed, relocatees should be permitted to utilize the proceeds of relocation as they see fit. In a number of cases at 1.9 GHz, relocators negotiated relocation contracts with microwave incumbents in good faith, allocating the contract costs, less any relocation premium, among the various cost categories for relocations. Notwithstanding that a relocator has no ability to police the expenditure of funds by a relocatee, subsequent triggers often demanded proof that the link had been relocated and receipts furnished by the relocatee as to the actual costs of relocation. Since it is the Commission's policy that relocatees should be permitted to acquire facilities on their own—indeed, the FCC encouraged the move to alternative transport—the FCC should clarify that the relocation contract itself is the only documentation necessary to support a cost-sharing claim.

III. CONCLUSION

In sum, PCIA believes that the clearinghouse concept has been extraordinarily successful for broadband PCS incumbent microwave relocation cost-sharing and that this model should be applied to AWS relocations. Given the large number of sharing participants, the complex reimbursement scenarios, and the overwhelming success of the PCIA MWCH, PCIA believes the

[6] See §24.247(b) (stating "costs may not be averaged over numerous links"). The prohibition on cost-averaging reflects the FCC's determination that clearing costs for a license should reflect the actual costs for relocating incumbents on a license-by-license basis.

model is one that should be emulated and, in fact, is the only practical means for ensuring a rapid and efficient transition of 2.1 GHz band use.

Respectfully submitted,

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